

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

Kawana Beatty-Adam,

Plaintiff,

v.

The University of Phoenix, Inc.,

Defendant.

:
: Civil Action No.: _____
:
:
:
:
:
:
:
:
:
:
:
:
:
:

: **COMPLAINT**
: **JURY TRIAL DEMANDED**
:
:
:
:
:
:
:

For this Complaint, the Plaintiff, Kawana Beatty-Adam, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

4. The Plaintiff, Kawana Beatty-Adam ("Plaintiff"), is an adult individual residing in Charlotte, North Carolina, and is a "person" as defined by 47 U.S.C.A. § 153(39).
5. Defendant The University of Phoenix, Inc. ("University"), is an Arizona business entity with an address of 4025 S. Riverpoint Parkway, Phoenix, Arizona 85040, and is a "person" as defined by 47 U.S.C.A. § 153(39).

FACTS

6. In or around May of 2014, University began calling Plaintiff's cellular telephone by using an automated telephone dialer system ("ATDS") and/or by using an artificial or prerecorded voice.

7. When Plaintiff answered the calls from University, she heard a prerecorded message instructing Plaintiff to hold for the next available representative.

8. Plaintiff has no business relations with University and never requested by an agreement or otherwise that she be contacted.

9. Plaintiff never provided her cellular telephone number to University and never provided her consent to University to be contacted on her cellular telephone.

10. In mid May 2014, Plaintiff directed University to remove her number from its call list and to cease all communications with her.

11. Thereafter, despite having been informed of the foregoing, University continued to call Plaintiff at a repeated and harassing rate, sometimes up to five times a day for successive days in a row.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – 47 U.S.C. § 227, et seq.

12. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

13. Without Plaintiff's consent, University contacted Plaintiff by using an automatic telephone dialing system and by using a prerecorded or artificial voice on her cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

14. University continued to place automated calls to Plaintiff's cellular telephone after being directed to cease calling and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

15. The telephone number called by University was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

16. The calls from University to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

17. University's telephone system has the capacity to store numbers in a random and sequential manner and uses the system to place the calls.

18. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

19. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendant:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);

C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: July 22, 2014

Respectfully submitted,

By: /s/ Ruth M. Allen

Ruth M. Allen, Esq.
Bar Number: 34739
7413 Six Forks Road, Suite 326
Raleigh NC 27615
Email: rallen@leberglaw.com
Telephone: (855) 301-2100 Ext. 5536
Facsimile: (888) 953-6237
Attorney for Plaintiff

Of Counsel To:

Sergei Lemberg, Esq.
LEMBERG LAW, L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424